EXHIBIT “E”

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BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In Re "A Million Little Pieces Litigation"	MDL Docket No. 1771

PLAINTIFF MICHELE SNOW'S MEMORANDUM IN SUPPORT AND JOINDER IN THE MOTION TO TRANSFER AND CONSOLIDATE ACTIONS TO A SINGLE JUDICIAL DISTRICT FOR PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407

Pursuant to 28 U.S.C. § 1407 and the Rules of Procedure on Multidistrict Litigation, Plaintiff Michele Snow respectfully submits this memorandum in support of her joinder of a motion to transfer submitted to the Panel on February 23, 2006 by Defendants Random House, Inc. ("Random House") and Doubleday & Company, Inc. ("Doubleday") (collectively "Defendants"). Defendants seek to transfer related actions to the United States District Court for the Southern District of New York, where a putative class action recently filed by Plaintiff Snow is pending. For the reasons set forth below, the Southern District of New York is the most appropriate transferee venue.

I. INTRODUCTION.

The related actions, identified in Exhibit "A" of Defendants' Exhibits to their motion to transfer, present common questions of law and fact, common defendants, and are brought on behalf of overlapping classes. Plaintiff Snow filed the first federal court action in the Southern District of New York against Defendants arising out of the promotion and sale of the book "*A Million Little Pieces*" (the "Book") written by James Frey. Plaintiff Snow agrees with Defendants that the most efficient and logical coordination of the various actions filed would be to transfer all filed actions to the Southern District of New York. Plaintiff Snow does not believe there is any appropriate basis to transfer the cases to the Northern District of Illinois.

II. Background.

The Book was written by defendant Frey and published by Defendants in 2003. The book was labeled by the Defendants as a non-fiction book. This label informs the reader that the book recounts events that are true and that, indeed, took place, as opposed to a fabricated story or plot. In September 2005, the Book was chosen as a selection by Oprah Winfrey for her world renowned Oprah Winfrey Book Club. More than two million copies were then sold.

On January 8, 2006, there was a report by *The Smoking Gun*, an investigative Web site, that there were multiple discrepancies between defendant Frey's life and his account of his life in the Book. Among the site's findings, that defendant Frey had spent only a few hours in jail, not nearly three months as he had written. This revelation called into question other "facts" set forth in the Book and started a chain reaction of accusations regarding what could be believed in this so-called work of "non-fiction."

In fact, on January 11, 2006, defendant Frey appeared on CNN's *Larry King Live* and, while acknowledging that he had fabricated some parts of his account, defended its overall message. "I still stand by my book. I still stand by the fact that it's my story. It's a truthful retelling of the story," he claimed.

On January 26, 2006, defendant Frey admitted on the nationally televised *Oprah Winfrey Show* that "I made a mistake," adding that he had developed a tough-guy image of himself as a "coping mechanism" to help address his alcohol and drug addiction. Defendant Frey further admitted that in addition to exaggerating the amount of time he had spent in jail, he had lied about how his girlfriend had died; about the details of a foray outside a rehabilitation center; and about his claim that he had received a root canal without anesthesia because the center prohibited the use of Novocaine.

Significantly, Defendants admitted that "neither she [Defendant representative Nan A. Talese] nor anyone at Doubleday had investigated the accuracy of Mr. Frey's book." Ms. Talese stated that "the company first learned that parts of the book had been made up when The Smoking Gun published its report, nearly two years after the memoir was first published."

Based on this information, on January 27, 2006, Plaintiff Snow filed the first federal action in the United States District Court for the Southern District of New York against Defendants arising out of, *inter alia,* the false and misleading advertising by Defendants of the Book.

Plaintiff Snow has learned that presently there are twelve (12) similar lawsuits pending before six different District Courts and ten (10) different judges.[1] Significantly,

[1] There are four actions pending in the United States District Court for the Southern District of New York; three actions pending in the United States District Court for the Northern District of Illinois; two actions

all of the actions involve the same core factual allegations against the Defendants and most assert similar legal theories of recovery. For all the reasons set forth herein, all actions should be transferred and consolidated before the Southern District of New York.

III. ARGUMENT.

In view of the facts outlined above, and the jurisprudence regarding multidistrict litigation set forth below, these cases should be centralized in the United States District Court for the Southern District of New York. Transfer and consolidation is essential to permit the efficient and non-duplicative handling of these cases and the Southern District of New York is the most appropriate venue for this multidistrict litigation because of its (i) proximity to documents, parties and witnesses and (ii) convenient accessibility.

A. Coordination and Consolidation is Warranted.

28 U.S.C. § 1407 authorizes the transfer of civil actions pending in federal districts and involving common questions of fact to a single federal district court for the purposes of coordinating pretrial proceedings if consolidation will: (i) further the convenience of the parties and witnesses; and (ii) promote the just and efficient conduct of the coordinated actions. The requirements for transfer under section 1407 are satisfied.

Transfer of the pending actions to a single district for coordinated pretrial proceedings under 28 U.S.C. §1407 is appropriate where, as here, the related cases concern significant common issues of law and fact. The Panel has consistently held that "[c]entralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings (especially with respect to questions

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pending in the United States District Court for the Central District of California; and one action each in the United States District Court for the Southern District of Ohio and the United States District Court for the Eastern District of Michigan.

of class certification), and conserve the resources of the parties, their counsel and the judiciary." *In re Isolagen, Inc. Securities & Derivative Litiagtion*, 2006 WL 488523, *1 (J.P.M.L. 2006). *See also In re WorldCom, Inc. Sec.& "ERISA" Litig.*, 226 F.Supp. 2d 1352, 1354 (J.P.M.L. 2002); *In re Starmed Health Personnel, Inc. Fair Labor Standards Act Litig.*, 317 F. Supp.2d 1389, 1381 (J.P.M.L. 2004); *Matter of New York Mun. Securities Litigation*, 572 F.2d 49 (2nd Cir. 1978); *In re Hawaiian Hotel Room Rate Antitrust Litig.*, 438 F. Supp. 935 (J.P.M.L. 1977); *In re Beef Industry Antitrust Litig.*, 419 F. Supp. 720 (J.P.M.L. 1976); *In re Clinton Oil Co. Sec. Litig.*, 368 F. Supp. 813 (J.P.M.L. 1973).

Further, the consolidation and transfer to the Southern District of New York would promote the efficient adjudication of these actions. There is no question that discovery in the pending actions will be duplicative (in each of the cases, plaintiffs will be seeking similar discovery from common defendants). To have the parties engaged in duplicative discovery in no less than five separate actions would be inefficient and an unnecessary burden on the judicial system.

Thus, to separately litigate each pending case (and subsequently filed related cases) would waste resources and present the danger of inconsistent pretrial rulings. Accordingly, centralization pursuant to 28 U.S.C. § 1407 is clearly warranted.

As stated, review of the complaints in each action clearly establishes that they all involve one or more common question of fact. Thus, even if the various actions claim different legal theories, consolidation is nevertheless appropriate. *See M3Power Razor Sys. Mktg. & Sales Practices Litig.*, 398 F.Supp. 2d 1363, 1365 (JPML 2005) (holding that "the presence of differing legal theories is outweighed when the underlying actions . .

, arise from a common factual core. Transfer under Section 1407 will offer the benefit of placing all actions in this docket before a single judge who can structure pretrial proceedings to accommodate all parties' legitimate discovery needs while ensuring that the common party and witnesses are not subjected to discovery demands that duplicate activity that will or has occurred in other actions.")

Plaintiff Snow agrees with Defendants that each action focuses on the same set of core facts, including the manner in which the Book was advertised, publicized and marketed; the lies perpetrated by the author, James Frey and the decision by the Defendants to publish a fictional work as a work of non-fiction. As such, coordination by the Panel is appropriate and necessary.

B. The United States District Court for the Southern District of New York is the Only Appropriate Transferee Forum.

Numerous factors may be considered by the Panel in determining the most appropriate transferee forum, including "convenience of the parties and witnesses [and] the location of documents." *See In re Computervision Corp. Sec. Litig.*, 814 F. Supp. 85 (J.P.M.L. 1993); *In re Silicone Gel Breast Implants Prods. Liab. Litig.*, 793 F. Supp. 1098 (J.P.M.L. 1992). Plaintiff Snow agrees with Defendants that the Southern District of New York is the most convenient forum for the actions and transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Here, the balance of factors weighs strongly in favor of transferring these actions to the Southern District of New York because it is where many of the parties and witnesses reside and where documents relevant to the litigation may be found. In addition, the Southern District of New York is conveniently located and easily accessible.

Finally, there is no basis for the actions to be transferred to the Northern District of Illinois.

1. The Southern District of New York is the Most Appropriate Forum for the Parties and Witnesses.

The convenience of the parties and witnesses is a critical factor in determining to which district related actions should be transferred. 28 U.S.C. § 1407 (related actions may be transferred to a district for coordinated proceedings upon a determination that the transfer "will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions"). In deciding whether a particular forum is convenient, the Panel frequently considers the location of the parties, documents and potential witnesses relative to that district. *See In re Baldwin-United Corp. Litig.*, 581 F. Supp. 739, 740 (J.P.M.L. 1984); *In re IBP Confidential Bus. Documents Litig.*, 491 F. Supp. 1359, 1363 (J.P.M.L. 1980).

There is little doubt that key witnesses and a majority of documents relevant to this litigation are currently located in the Southern District of New York. Random House is headquartered in New York City and the author, James Frey, likewise lives in New York. These witnesses will have relevant information regarding, *inter alia*, their conversations with Mr. Frey, their investigation, if any, of the claims in the Book, and the marketing and publishing efforts regarding the Book.

The Panel has routinely transferred related cases to courts that are situated in close proximity to defendants' headquarters because witnesses and documents are likely to be found there. *See e.g., In re Service Corp. Int'l Sec. Litig.*, 323 F. Supp.2d 1377, 1378 (J.P.M.L. 2004); *In re WorldCom Sec. & "ERISA" Litig.*, 226 F. Supp. 2d 1352, 1355 (JPML 2002); *In re Factor VIII or IX Concentrate Blood Products Prods. Liab.*

Litig., 853 F. Supp. 454, 455 (J.P.M.L. 1993); *In re Alert Income Partners Sec. Litig.*, 788 F. Supp. 1230, 1231 (J.P.M.L. 1992); *In re Corn Derivatives Antitrust Litig.*, 486 F. Supp. 929, 931-32 (J.P.M.L. 1980).

In addition, the Southern District of New York is equipped with the resources to effectively manage the related actions, including being outfitted for electronic filing.

2. The Accessibility of the Southern District of New York Warrants Transfer.

While many of the parties may work or reside in or close to New York, parties from other parts of the United States will find the Southern District of New York to be conveniently accessible via all forms of transportation. The courthouse is a short driving distance from J.F.K. International Airport and Newark Liberty International Airport, both major hubs with direct flights on many airlines to numerous cities across the United States. New York is also easily accessible via regional rail and Amtrak's Northeast Corridor service.

On balance, the accessibility factor clearly favors centralization of related actions in the Southern District of New York.

3. There is no Basis to Transfer the Actions to the Northern District of Illinois.

In their motion to transfer, Defendants request, without citation, that if the Panel denies the motion to transfer the actions to the Southern District of New York, then the matter should be transferred to the Northern District of Illinois. While Plaintiff Snow agrees with Defendants' desire to coordinate the litigation, there is no objective basis to transfer the actions to the Northern District of Illinois.

First, there are four (4) actions filed in the Southern District of New York, as opposed to the three (3) actions filed in the Northern District of Illinois. *See, e.g. In re Publication Paper Antitrust Litig.*, 346 F.Supp. 2d 1370, 1372 (J.P.M.L. 2004) (choosing as transferee forum the jurisdiction with the "largest number of pending actions," even though that number was only one-third of the total).

Second, there is no real nexus between the allegations set forth in the complaints and the Northern District of Illinois. The three (3) complaints that have been removed to the Northern District of Illinois each involve a citizen of Illinois seeking to represent a national class of consumers who purchased the Book. That is all. There can be no real dispute that the majority of documents and witnesses that will be involved in discovery are located in or near the Southern District of New York and not the Northern District of Illinois. Moreover, Plaintiff Snow filed her action in the Southern District of New York prior to the time that the Northern District of Illinois took jurisdiction over any of the Illinois actions.

In addition to the dearth of witnesses and documents available in the Northern District of Illinois, a review of current MDL statistics reveals that transfer to Judge Richard J. Holwell is more appropriate. Of the four actions pending in the Southern District of New York, three are assigned to Judge Holwell, with the remaining action assigned to Judge Gerald E. Lynch. The Northern District of Illinois actions are each assigned to a different judge.[2]

Moreover, based on the 2005 Statistical Analysis of Multidistrict Litigation, as of September 2005, Judge Holwell does not have any pending MDL proceedings. On the

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[2] *More v. Frey, et al.*, (06 CV 0934) (Judge Coar), *Strack v. Frey, et al.* (06 CV 0933) (Judge Grady), and *Vedral v. Frey* (06 CV 0935) (Judge Shadur).